



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 15.01.2002
COM(2002) 11 final

Proposal for a

COUNCIL DECISION

concerning the signing of a new Protocol to the Barcelona Convention concerning cooperation in preventing pollution from ships and in combating pollution of the Mediterranean Sea by oil and hazardous and noxious substances in cases of emergency

(presented by the Commission)

EXPLANATORY MEMORANDUM

- (1) The Community is a Contracting Party to the Barcelona Convention for the protection of the Mediterranean Sea against pollution¹. Under the Convention, the Community is also a Contracting Party to the following Protocols: Protocol for the prevention of pollution by dumping from ships and aircraft², Protocol concerning cooperation in combating pollution of the Mediterranean Sea by oil and other harmful substances in cases of emergency³, Protocol for the protection of the Mediterranean Sea against pollution from land-based sources⁴, and Protocol concerning specially protected areas and biological diversity in the Mediterranean⁵.
- (2) At their ordinary meeting of 1999, the Contracting Parties to the Barcelona Convention decided to amend the current Protocol concerning cooperation in combating pollution of the Mediterranean Sea by oil and other harmful substances in cases of emergency in order to introduce the provisions necessary for developing a regional strategy for preventing pollution of the marine environment of the Mediterranean caused by ships.
- (3) By decision of 24-25 January 2000 (doc. 14243/99 ENV 463 MAR 115), the Council authorised the Commission to take part on behalf of the European Community in the negotiations concerning the said Protocol.
- (4) A draft for a new Protocol was drawn up by the Secretariat following the meeting of legal and technical experts held in Monaco from 2 to 6 April 2001. This meeting proposed to the Contracting Parties to the Barcelona Convention that a new Protocol should be adopted rather than amending the existing one as the provisions envisaged were substantially innovative compared with the existing Protocol and because adopting a new Protocol makes its entry into force easier as only six ratifications are required for this purpose. The Conference of the Parties to the Convention agreed on this approach at their 12th Meeting held from 14–17 November 2001 in Monaco.
- (5) In addition to the April technical meeting in Monaco an informal meeting of some key Parties was held in Malta from 29 – 30 October 2001 to consider amendments put forward by the Commission, following discussions with a Council Working Group on 24 October.
- (6) Throughout the negotiations the Commission was guided by the following considerations in fulfilling the mandate received from the Council:
 - (a) The new Protocol is a necessary update of the legal instruments of the Barcelona Convention following the amendments made to it in 1995 and is a significant contribution to achieving cooperation in preventing pollution of the Mediterranean Sea.

¹ Decisions 77/585/EEC of 25.7.1977, JO L240 of 19.7.1977 p.1;
1999/802/EC of 22.10.1999, JO L322 of 14.12.1999 p.32.

² Decisions 77/585/EEC of 25.7.1977, JO L240 of 19.7.1977 p.1;
1999/802/EC of 22.10.1999, JO L322 of 14.12.1999 p.32.

³ Decision 81/420/EEC of 19.5.1981, JO L162 of 19.6.1981 p.4

⁴ Décisions 83/101/EEC of 28.2.1983, JO L067 of 12.3.1983 p.1;
1999/801/EC of 22.10.1999, JO L322 of 14.12.1999 p.18.

⁵ Decision 1999/800/EC of 22.10.1999, JO L322 of 14.12.1999 p.1.

- (b) The draft Protocol contains various provisions dealing with questions covered by Community legislation in force or due to be adopted shortly concerning safety at sea and the prevention of pollution by ships.⁶ This includes provisions concerning cooperation on exchanging information among the Parties, procedures for notification by ships of events occurring at sea or instances of pollution, operational measures, port reception facilities, safety of traffic and access to ports for ships in difficulty. Accordingly, it is necessary to ensure that the text of the Protocol does not contradict provisions of Community legislation currently in force or in the process of being adopted.
 - (c) Particular terms used in the Protocol ought to be brought in line as much as possible with the terms used in Community legislation so as to avert any risk of confusion or wrong interpretation in the practical application of the provisions concerned by the Member States.
 - (d) The text of the Protocol should mention the contribution of rules and standards adopted by the European Community and by the States bordering the Mediterranean Sea in order to attain the Protocol's objectives, i.e. the prevention, reduction and control of pollution caused by ships in the marine environment. Such national and regional measures taken in the framework of the Protocol should in any case be compatible with international law or implement it.
 - (e) The possibility of including in the Protocol a number of new elements from Community legislation on safety at sea and the prevention of marine pollution.
- (7) The draft Protocol, as it stands following the meeting in Malta in October responds satisfactorily to the first four of the considerations outlined above. The Commission proposed text for Articles 8 paragraph 1 and 9 bis paragraph 2 in Malta which would have brought the draft into line with the Transport Council's Common Position on a Community system for monitoring shipping and information on maritime traffic. The original version of these proposals was not accepted by the meeting and further amendments proposed by the Commission were not discussed in Malta for lack of time. Proposals for changes in Article 10 ter Paragraph 1 to bring it closer to the

⁶ This includes the following texts:

- a) Council Directive 93/75/EEC of 13 September 1993 concerning minimum requirements for vessels bound for or leaving Community ports and carrying dangerous or polluting goods (OJ L 247 of 5.10.1993, p. 19); Directive last amended by Directive 98/74/EC (OJ L 276 of 13.10.1998, p. 7)).
- b) Council Directive 95/21/EC of 19 June 1995 concerning the enforcement, in respect of shipping using Community ports and sailing in the waters under the jurisdiction of the Member States, of international standards for ship safety, pollution prevention and shipboard living and working conditions (port State control) (OJ L 157 of 7.7.1995, p. 1); directive last amended by Directive 1999/97/EC (OJ L 331 of 23.12.1999, p. 67).
- c) Directive 2000/59/EC of the European Parliament and of the Council of 27 November 2000 on port reception facilities for ship-generated waste and cargo residues (OJ L 332 of 28.12.2000, p. 81).
- d) Proposal for Directive of the European Parliament and of the Council of 8 December 2000 establishing a Community monitoring, control and information system for maritime traffic (OJ C 120 E of 24.4.2001, p. 67). At its meeting of 28 June 2001, the Transport Council adopted a common position on this proposal.

Community position for charging for port reception facilities were agreed subject to a reserve from Egypt.

- (8) The text will be subject to one more round of formal negotiations in a Third Meeting of National Technical and Legal Experts to be held in Malta from 20 to 22 January. In its preparatory observations and at that meeting the Commission intends to continue to put the case for strengthening the texts of Articles 8.1 and 9 bis 2 beyond the versions agreed at the Second meeting in Monaco in April 2000.
- (9) As is customary under the Barcelona Convention, arrangements have been made for a Conference of Plenipotentiaries to be held immediately after the technical negotiating meeting. In principle, the Conference on 24 and 25 January should adopt the final version of the Protocol which will be open for signature by the Contracting Parties on the same occasion. Providing the final text meets the considerations set out above and is consistent with the Commission's mandate, it would be highly desirable for the Community to sign the new Protocol during the Conference. This would be an expression of our commitment to preventing pollution from ships and to implementing the legal framework of the amended Barcelona Convention in order to protect the Mediterranean Sea. If necessary, the Declaration suggested in paragraph 8 would be made and recorded in the Conference proceedings.
- (10) To this end, the Council is asked to authorise its President to designate the person or persons authorised to sign, on behalf of the Community, the new Protocol concerning cooperation in preventing pollution from ships and in combating pollution of the Mediterranean Sea by oil and hazardous and noxious substances in cases of emergency, provided that the final text of the new Protocol is consistent with Community legislation in this field.

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THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 174(4) thereof in conjunction with the first sentence of the first paragraph of Article 300(2),

Having regard to the proposal from the Commission⁷,

Whereas :

- (1) The new Protocol is a necessary update of the legal instruments of the Convention for the Protection of the Mediterranean Sea against Pollution (Barcelona Convention), as amended in 1995, in order to introduce the provisions necessary to develop a regional strategy for preventing pollution from ships of the marine environment of the Mediterranean;
- (2) The Community is a Contracting Party to the Convention for the Protection of the Mediterranean Sea against Pollution⁸ (Barcelona Convention) and the Protocol concerning cooperation in combating pollution of the Mediterranean Sea by oil and other harmful substances in cases of emergency⁹;
- (3) The Commission took part, on behalf of the Community, in the negotiations for the preparation of a new Protocol concerning cooperation in preventing pollution from ships and in combating pollution of the Mediterranean Sea by oil and hazardous and noxious substances in cases of emergency on the basis of the negotiating mandate received from the Council on 24-25 January 2001;
- (4) The areas of application of the said new Protocol come under Community competence, at least partly;
- (5) The draft of the new Protocol remains subject to the observations of the Contracting Parties and to negotiations before, in principle, being adopted and opened for signature by the Contracting Parties at the Conference of Plenipotentiaries to be held in Malta in January 2002;

⁷ OJ C [...] of [...], p. [...].

⁸ Decisions 77/585/EEC of 25.7.1977, OJ L 240 of 19.9.1977 p. 1 and 1977/802/EC of 22.10.1999, OJ L 322 of 14.12.1999 p. 32.

⁹ Decision 81/420/EEC of 19.5.1981, OJ L162 of 19.6.1981, p. 4.

- (6) It is important that the Protocol can be signed by the Community, provided that it is consistent with Community law in this domain;

HAS DECIDED AS FOLLOWS

Sole Article

The President of the Council is hereby authorised to appoint the person(s) empowered to sign, on behalf of the Community, the new Protocol to the Barcelona Convention concerning cooperation in preventing pollution from ships and in combating pollution of the Mediterranean Sea by oil and hazardous and noxious substances in cases of emergency, provided that the final text of the new Protocol is consistent with relevant Community legislation.

Done at Brussels, [...]

For the Council
The President
[...]

ANNEX

The text of Annex II shows amendments adopted as a result of the meeting of all experts held in Monaco in bold. Changes discussed following EC proposals at the restricted meeting in Malta are shown in bold in boxes along with a comment in italics.

DRAFT PROTOCOL CONCERNING COOPERATION IN PREVENTING POLLUTION FROM SHIPS AND IN COMBATING POLLUTION OF THE MEDITERRANEAN SEA BY OIL AND HAZARDOUS AND NOXIOUS SUBSTANCES IN CASES OF EMERGENCY¹⁰

The Contracting Parties to the present Protocol,

Being Parties to the Convention for the Protection of the Mediterranean Sea against Pollution, adopted at Barcelona on 16 February 1976 and amended on 10 June 1995,

Desirous of implementing articles 6 and 9 of the said Convention, as amended,

Recognizing that grave pollution of the sea by oil and hazardous and noxious substances or a threat thereof in the Mediterranean Sea Area involves a danger for the coastal States and the marine environment,

Considering that the cooperation of all the coastal States of the Mediterranean Sea is called for to prevent pollution from ships and to respond to pollution incidents, irrespective of their origin,

Malta meeting:

The Meeting agreed that, after the fifth paragraph of the Preamble, a new paragraph should be inserted as follows :

Acknowledging the contribution of the European Community to the implementation of international standards as regards maritime safety and the prevention of pollution from ships,

Acknowledging the role of the International Maritime Organization and the importance of cooperating within the framework of this Organization, in particular in promoting the adoption and the development of international rules and standards to prevent, reduce and control pollution of the marine environment from ships,

Recognizing the importance of cooperation in the Mediterranean Sea Area in promoting the effective implementation of international regulations to prevent, reduce and control pollution of the marine environment from ships,

¹⁰ The way of presenting the Articles of the Protocol and their Headings are corrected in order to be in line with the standard type adopted by the other Protocols and the Convention.

Recognizing also the importance of prompt and effective action at the national, subregional and regional levels in taking emergency measures to deal with pollution of the marine environment or a threat thereof,

Applying the precautionary principle, the polluter pays principle and the method of environmental impact assessment, and utilizing the best available techniques and the best environmental practices, as provided for in article 4 of the Convention,

Bearing in mind the relevant provisions of the United Nations Convention on the Law of the Sea, done at Montego Bay on 10 December 1982,

Taking into account the international conventions dealing in particular with maritime safety, the prevention of pollution from ships, preparedness for and response to pollution incidents, and liability and compensation for pollution damage,

Wishing to further develop mutual assistance and cooperation in preventing and combating pollution,

Have agreed as follows:

Article 1

DEFINITIONS

Malta meeting:

The Meeting agreed that Article 1 should be considered together with Article 14, and suggested that the text of paragraph e) as agreed by the Monaco Meeting should not be changed provided that the Third Meeting of National Legal and Technical Experts agrees with the text of Article 14 as reproduced below.

For the purpose of this Protocol:

- (a) **“Convention” means the Convention for the Protection of the Mediterranean Sea against Pollution, adopted at Barcelona on 16 February 1976 and amended on 10 June 1995;**¹¹
- (b) “Pollution incident” means an occurrence or series of occurrences having the same origin, which results or may result in a discharge of oil and/or hazardous and noxious substances and which poses or may pose a threat to the marine environment, or to the coastline or related interests of one or more States, and which requires emergency action or other immediate response;
- (c) “Hazardous and noxious substances” means any substance other than oil which, if introduced into the marine environment, is likely to create hazards to human health, to harm living resources and marine life, to damage amenities or to interfere with other legitimate uses of the sea;
- (d) “Related interests” means the interests of a coastal State directly affected or threatened and concerning, among others
 - (i) maritime activities in coastal areas, in ports or estuaries, including fishing activities;
 - (ii) the historical and tourist appeal of the area in question, including water sports and recreation;
 - (iii) the health of the coastal population;
 - (iii *bis*) the cultural, aesthetic, scientific and educational value of the area;
 - (iv) the conservation of biological diversity and the sustainable use of marine and coastal biological resources;

¹¹ The standard definition of the “Convention” is added under 1(a). This is exactly done in all other Protocols (LBS PROTOCOL, SPA & BD PROTOCOL, OFFSHORE PROTOCOL, HAZARDOUS WASTES PROTOCOL) and is also necessary for the new Protocol. The enumeration of the rest of the sub-paragraphs is corrected accordingly.

- (e) “International regulations” means regulations aimed at preventing, reducing and controlling pollution of the marine environment from ships as adopted, at the global level and in conformity with international law, under the aegis of United Nations specialized agencies, and in particular of the International Maritime Organization;¹²
- (f) “Regional centre” means the “Regional Marine Pollution Emergency Response Centre for the Mediterranean Sea” (REMPEC), established by Resolution 7 adopted by the Conference of Plenipotentiaries of the Coastal States of the Mediterranean Region on the Protection of the Mediterranean Sea at Barcelona on 9 February 1976, which is administered by the International Maritime Organization and the United Nations Environment Programme, and of which the objectives and functions are defined by the Contracting Parties to the Convention¹³.

Article 1 bis

PROTOCOL AREA

The area to which the Protocol applies shall be the Mediterranean Sea Area as defined in article 1 of the Convention¹⁴.

Article 2

GENERAL PROVISIONS

1. The Parties shall cooperate:
- (a) to implement international regulations to prevent, reduce and control pollution of the marine environment from ships; and
 - (b) to take all necessary measures in cases of pollution incidents.

Malta meeting:

The Meeting agreed that, after paragraph 1 of Article 2, a new paragraph should be inserted as follows :

(1 bis) In cooperating, the Parties should take into account as appropriate the participation of local authorities, non-governmental organisations and economic operators.

¹² Reservation by the European Community

¹³ In the new 1 (f) the word “whose” (one line before the end) is replaced by the correct “of which the” and the word “Barcelona” (end line), after the introduction of art. 1a) is unnecessary and is also deleted.

¹⁴ This article is adjusted to the correction of Article 1 and, as a result, after the word “Convention” the rest of the text is deleted.

2. Each Party shall apply this Protocol without prejudice to the sovereignty or the jurisdiction of other Parties or other States. Any measures taken by a Party to apply this Protocol shall be in accordance with international law.

Article 3

CONTINGENCY PLANS AND OTHER MEANS OF PREVENTING AND COMBATING POLLUTION INCIDENTS

1. The Parties shall endeavour to maintain and promote, either individually or through bilateral or multilateral cooperation, contingency plans and other means of preventing and combating pollution incidents. These means shall include, in particular, equipment, ships, aircraft and **personnel**¹⁵ prepared for operations in cases of emergency, the enactment, as appropriate, of relevant legislation, the development or strengthening of the capability to respond to a pollution incident and the designation of a national authority or authorities responsible for the implementation of this Protocol.

2. The Parties shall also take measures in conformity with international law to prevent the pollution of the Mediterranean Sea Area from ships in order to ensure the effective implementation in that Area of the relevant international conventions in their capacity as Flag State, Port State and Coastal State, and their applicable legislation. They shall develop their national capacity as regards the implementation of those international conventions and may cooperate for their effective implementation through bilateral or multilateral agreements.

3. The Parties shall inform the regional centre every two years of the measures taken for the implementation of this Article. The regional centre shall present a report to the Parties on the basis of the information received.

Article 4

MONITORING

The Parties shall develop and apply, either individually or through bilateral or multilateral cooperation, monitoring activities covering the Mediterranean Sea Area in order to prevent, detect and combat pollution, and to ensure compliance with the relevant international regulations.

Article 5

COOPERATION IN RECOVERY OPERATIONS

In case of release or loss overboard of hazardous and noxious substances in packaged form, including those in freight containers, portable tanks, road and rail vehicles and shipborne barges, the Parties shall cooperate as far as practicable in the salvage of these

¹⁵ The word “manpower” is replaced by the word “personnel” used in the OPRC CONVENTION. The word manpower is no longer used because of its sexist connotation.

packages and the recovery of such substances so as to prevent or reduce the danger to the marine and coastal environment.

Article 6

DISSEMINATION AND EXCHANGE OF INFORMATION

1. Each Party undertakes to disseminate to the other Parties information concerning:
 - (a) the competent national organization or authorities responsible for combating pollution of the sea by oil and hazardous and noxious substances;
 - (b) the competent national authorities responsible for receiving reports of pollution of the sea by oil and hazardous and noxious substances and for dealing with matters concerning measures of assistance between Parties;
 - (b *bis*) the national authorities entitled to act on behalf of the State in regard to measures of mutual assistance and cooperation between Parties;

Malta meeting:

[Article 6, paragraph 1 (b bis bis)]

The Meeting agreed that, after the word “concerned”, the words “and other relevant applicable regulations” should be inserted as follows:

(b bis bis) the national organization or authorities responsible for the implementation of article 3.2, in particular¹⁶ those responsible for the implementation of the international conventions concerned **and other relevant applicable regulations**, those responsible for the development of port reception facilities and those responsible for the monitoring of discharges which are illegal under MARPOL 73/78;

- (b *ter*) its regulations and other matters which have a direct bearing on preparedness for and response to pollution of the sea by oil and hazardous and noxious substances;
 - (c) new ways in which pollution of the sea by oil and hazardous and noxious substances may be avoided, new measures for combating pollution, new developments in the technology of conducting monitoring and the development of research programmes.
2. The Parties which have agreed to exchange information **directly**¹⁷ shall communicate such information to the regional centre. The latter shall communicate this information to the other Parties and, on a basis of reciprocity, to coastal States of the Mediterranean Sea Area which are not Parties to this Protocol.
3. **Parties** concluding bilateral or multilateral agreements within the framework of this

¹⁶ After the word “in particular” the comma is deleted.

¹⁷ The phrase “between themselves” are deleted.

Protocol shall inform the regional centre of such agreements, which **shall** communicate **them** to the other **Parties**¹⁸.

Article 7

COMMUNICATION OF INFORMATION AND REPORTS CONCERNING POLLUTION INCIDENTS

The Parties undertake to coordinate the utilization of the means of communication at their disposal in order to ensure, with the necessary speed and reliability, the reception, transmission and dissemination of all reports and urgent information concerning pollution incidents. The regional centre shall have the necessary means of communication to enable it to participate in this coordinated effort and, in particular, to fulfil the functions assigned to it by paragraph 2 of article 10.

Article 8

REPORTING PROCEDURE

1. Each Party shall issue instructions to masters or other persons having charge of ships flying its flag and to the pilots of aircraft registered in its territory to report by the most rapid and adequate channels in the circumstances, following reporting procedures to the extent required by, and in accordance with, the applicable provisions of the relevant international agreements, to the nearest coastal State and to this Party:

- (a) all incidents which result or may result in a discharge of oil or hazardous and noxious substances;

Malta meeting:

[Article 8, paragraph 1 (b)]

The Meeting agreed that, after the words “noxious substances”, the words “including HNS carried in packaged form” should be inserted as follows:

(b) the presence, characteristics and extent of spillages of oil or hazardous and noxious substances **including HNS carried in packaged form** observed at sea which pose or are likely to pose a threat to the marine environment or to the coast or related interests of one or more of the Parties.

Following rejection by the Malta meeting of a text referring to ships sailing in waters under the jurisdiction of Parties, the EC proposed the following text which was not further discussed:

(Addition to 8.1) Without prejudice to provisions of Article 14 of the Protocol, each Party shall require the masters of every ship sailing in its territorial waters to comply with the obligations provided for under (a) and (b).

¹⁸ The initial “The” is deleted and the last sentence is stated in better English.

Malta meeting:

[Article 8, paragraph 1 (bis)]

The Meeting agreed that the words “its national law” should be replaced by the words “laws applicable to the Parties” as follows:

(1 bis) Each Party shall also issue instructions to persons having charge of sea ports or handling facilities under its jurisdiction to report to it, in accordance with ~~its national law~~ **laws applicable to the Parties**, all incidents which result or may result in a discharge of oil or hazardous and noxious substances.

1 *ter*. In accordance with the Protocol for the Protection of the Mediterranean Sea against Pollution Resulting from Exploration and Exploitation of the Continental Shelf and the Seabed and its Subsoil, each Party shall issue instructions to persons having charge of offshore units under its jurisdiction to report to it by the most rapid and adequate channels in the circumstances, following reporting procedures it has prescribed, all incidents which result or may result in a discharge of oil or hazardous and noxious substances.

1 *quater*. The information collected in accordance with paragraphs 1, 1 *bis* and 1 *ter* shall be communicated to the regional centre, as appropriate.

2. The information collected in accordance with paragraphs 1, 1 *bis* and 1 *ter* shall be immediately communicated to the other Parties likely to be affected by the pollution incident:

- (a) by the Party which has received the information, preferably directly or through the regional centre; or
- (b) by the regional centre.

In case of direct communication between Parties, these shall inform the regional centre of the measures taken, and the centre shall communicate them to the other Parties.

2 *bis*. The Parties shall use a mutually agreed standard form proposed by the regional centre for the reporting of pollution incidents as required under paragraph 2 of this article.

3. In consequence of the application of the provisions of paragraph 2, the Parties are not bound by the obligation laid down in article 9, paragraph 2, of the Convention.

Article 9

OPERATIONAL MEASURES

1. Any Party faced with a pollution incident shall:

- (a) make the necessary assessments of the nature, extent and possible consequences of the pollution incident or, as the case may be, the type and approximate quantity of oil or hazardous and noxious substances and the direction and speed of drift of the spillage;
- (b) take every practicable measure to prevent, reduce and, to the fullest possible

extent, eliminate the effects of the pollution incident;

- (c) immediately inform all Parties likely to be affected by the pollution incident of these assessments and of any action which it has taken or intends to take, and simultaneously provide the same information to the regional centre, which shall communicate it to all other Parties;
- (d) continue to observe the situation for as long as possible and report thereon in accordance with article 8.

2. Where action is taken to combat pollution originating from a ship, all possible measures shall be taken to safeguard:

- (a) human lives;
- (b) the ship itself; in doing so, damage to the environment in general shall be prevented or minimized.

Any Party which takes such action shall inform the International Maritime Organisation either directly or through the regional centre.

Article 9 bis

EMERGENCY MEASURES ON BOARD SHIPS, ON OFFSHORE INSTALLATIONS AND IN PORTS

1. Each Party shall take the necessary steps to ensure that ships flying its flag have on board a pollution emergency plan as required by, and in accordance with, the relevant international regulations.

Following rejection by the Malta meeting of a text referring to ships sailing in waters under the jurisdiction of Parties, the EC proposed the following text which was not further discussed:

(2) Without prejudice to Article 14 , each Party shall require the masters of ships flying its flag and shall invite masters of each ship sailing in its territorial waters , in case of a pollution incident, to follow the procedures described in the emergency plan and in particular to provide the proper authorities, at their request, with such detailed information about the ship and its cargo which is relevant to actions taken in pursuance of article 9, and to co-operate with these authorities

3. Each Party shall require that authorities or operators in charge of sea ports and handling facilities under its jurisdiction as it deems appropriate have pollution emergency plans or similar arrangements that are coordinated with the national system established in accordance with article 3 and approved in accordance with procedures established by the competent national authority.

4. Each Party shall require operators in charge of offshore installations under its jurisdiction to have a contingency plan to combat any pollution incident, which is coordinated with the national system established in accordance with article 3 and in accordance with the procedures established by the competent national authority.

Article 10

ASSISTANCE

1. Any Party requiring assistance to deal with a pollution incident may call for assistance from other Parties, either directly or through the regional centre, starting with the Parties which appear likely to be affected by the pollution. This assistance may comprise, in particular, expert advice and the supply to or placing at the disposal of the Party concerned of the required specialized personnel, products, equipment and nautical facilities. Parties so requested shall use their best endeavours to render this assistance.
2. Where the Parties engaged in an operation to combat pollution cannot agree on the organization of the operation, the regional centre may, with their approval, coordinate the activity of the facilities put into operation by these Parties.
3. In accordance with applicable international agreements, each Party shall take the necessary legal and administrative measures to facilitate:
 - (a) the arrival and utilization in and departure from its territory of ships, aircraft and other modes of transport engaged in responding to a pollution incident or transporting personnel, cargoes, materials and equipment required to deal with such an incident; and
 - (b) the expeditious movement into, through and out of its territory of the personnel, cargoes, materials and equipment referred to in subparagraph (a).

Article 10 bis

REIMBURSEMENT OF COSTS OF ASSISTANCE

1. Unless an agreement concerning the financial arrangements governing actions of Parties to deal with pollution incidents has been concluded on a bilateral or multilateral basis prior to the pollution incident, Parties shall bear the costs of their respective action in dealing with pollution in accordance with paragraph 2.
2.
 - (a) If the action was taken by one Party at the express request of another Party, the requesting Party shall reimburse to the assisting Party the costs of its action. If the request is cancelled, the requesting Party shall bear the costs already incurred or committed by the assisting Party;
 - (b) if the action was taken by a Party on its own initiative, that Party shall bear the cost of its action;
 - (c) the principles laid down above in subparagraphs (a) and (b) shall apply unless the Parties concerned otherwise agree in any individual case.
3. Unless otherwise agreed, the costs of the action taken by a Party at the request of another Party shall be fairly calculated according to the law and current practice of the assisting Party concerning the reimbursement of such costs.
4. The Party requesting assistance and the assisting Party shall, where appropriate, cooperate in concluding any action in response to a compensation claim. To that end, they

shall give due consideration to existing legal regimes. Where the action thus concluded does not permit full compensation for expenses incurred in the assistance operation, the Party requesting assistance may ask the assisting Party to waive reimbursement of the expenses exceeding the sums compensated or to reduce the costs which have been calculated in accordance with paragraph 3. It may also request a postponement of the reimbursement of such costs. In considering such a request, assisting Parties shall give due consideration to the needs of developing countries.

Malta meeting:

[Article 10 bis, paragraph 5]

The Meeting agreed that the words “of international law and national or supra-national regulations” should be replaced by the words “national and international law, applicable to one or the other Party involved in the assistance” as follows:

(5) The provisions of this article shall not be interpreted as in any way prejudicing the rights of Parties to recover from third parties the costs of actions taken to deal with pollution incidents under other applicable provisions and rules of ~~international law and national or supra-national regulations~~ **national and international law, applicable to one or the other Party involved in the assistance.**

Article 10 ter

PORT RECEPTION FACILITIES

Malta meeting:

[Article 10 ter, paragraph 1]

After an extensive exchange of views, the Meeting agreed to amend 10 ter 1 as follows:

(1) The Parties shall take all necessary steps to ensure that reception facilities meeting the needs of ships are available in their ports and terminals. The Parties shall ensure that ships calling to their ports utilize, as necessary, these facilities and contribute at reasonable cost to their operation.

The earlier text was :

1. The Parties shall take all the necessary steps to ensure the provision and utilisation **at reasonable cost** in their ports and terminals of reception facilities, adequate to meet the needs of the ships using them, without causing undue delay to ships¹⁹.
2. The Parties shall also ensure the provision of adequate reception facilities for pleasure craft.
3. The Parties shall take all the necessary steps to ensure that reception facilities operate efficiently to limit any impact of their discharges to the marine environment.

¹⁹ The phrase “at reasonable cost” is transferred after the word “utilization” because the word “adequate” refers to the word “reception facilities” and the existing formulation was confusing.

4. The Parties shall take the necessary steps to provide ships using their ports with updated information relevant to the obligations arising from MARPOL 73/78 and from their legislation applicable in this field.

Article 10 quater

ENVIRONMENTAL SAFETY OF MARITIME TRAFFIC

Malta meeting:

The Meeting agreed that the words “within the framework” should be replaced by the words “respecting the competences” as follows:

In conformity with generally accepted international standards and within the framework of their recognized competencies, the Parties shall take the necessary steps to assess the environmental safety, individually, bilaterally or multilaterally, of the recognized routes used in maritime traffic and shall take the appropriate initiatives, ~~within the framework~~ **respecting the competences** of the International Maritime Organization, aimed at reducing the risks of accidents or the environmental consequences thereof.

Article 10 quinquies

Malta meeting:

The Meeting agreed that the words “access to their ports” should be replaced by the words “reception in places of refuge, including ports” and that the title of the article should be changed accordingly as follows:

Title: RECEPTION OF SHIPS IN DISTRESS IN PORTS AND PLACES OF REFUGE

The Parties shall define national, subregional or regional strategies concerning ~~access to their ports~~ **reception in places of refuge, including ports**, of ships in distress presenting a threat to the marine environment. They shall cooperate to this end and inform the regional centre of the measures they have adopted.

Article 11

SUBREGIONAL AGREEMENTS

The Parties may negotiate, develop and maintain appropriate bilateral or multilateral subregional agreements in order to facilitate the implementation of this Protocol, or part of it. Upon request of the interested Parties, the regional centre shall assist them, within the framework of its functions, in the process of developing and implementing these subregional agreements.

Article 11 bis

THE REGIONAL CENTRE

Article DELETED, see Article 1 “Definitions”

Article 12

MEETINGS

1. Ordinary meetings of the Parties to this Protocol shall be held in conjunction with ordinary meetings of the Contracting Parties to the Convention, held pursuant to article 18 of the Convention. The Parties to this Protocol may also hold extraordinary meetings as provided in article 18 of the Convention.
2. It shall be the function of the meetings of the Parties to this Protocol, in particular:
 - (a) to examine and discuss reports from the regional centre on the implementation of this Protocol, and particularly of its articles 3, 6 and 10 *quinquies*;
 - (b) to formulate and adopt strategies, action plans and programmes for the implementation of this Protocol;
 - (c) to keep under review and consider the efficacy of these strategies, action plans and programmes, and the need to adopt any new strategies, action plans and programmes and to develop measures to that effect;
 - (d) to discharge such other functions as may be appropriate for the implementation of this Protocol.

Article 13

RELATIONSHIP WITH THE CONVENTION

1. The provisions of the Convention relating to any protocol shall apply with respect to the present Protocol.
2. The rules of procedure and the financial rules adopted pursuant to article 24 of the Convention shall apply with respect to this Protocol, unless the Parties agree otherwise.

FINAL PROVISIONS

Article 14

EFFECT OF THE PROTOCOL ON DOMESTIC LEGISLATION

Malta meeting:

Taking into account the agreement to consider Article 1 in conjunction with Article 14, the Meeting suggested that the text of Article 14 as adopted by the Monaco Meeting should be replaced by the following text:

<p>In implementing the provisions of this Protocol, the right of Parties to adopt relevant stricter domestic measures or other measures in conformity with international law, in the areas covered by this Protocol, shall not be affected.</p>
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The earlier version was:

The provisions of this Protocol shall not affect the right of Parties to adopt relevant stricter domestic measures for the implementation of this Protocol.

Article 15

RELATIONS WITH THIRD PARTIES

The Parties shall, where appropriate, invite States that are not Parties to the Protocol and international organizations to cooperate in the implementation of the Protocol.

Article 16

SIGNATURE

This Protocol shall be open for signature at.....on..... and at.....from2001 to2002 by any Contracting Party to the Convention.

Article 17

RATIFICATION, ACCEPTANCE OR APPROVAL

This Protocol shall be subject to ratification, acceptance or approval. The instruments of ratification, acceptance or approval shall be deposited with the Government of Spain, which will assume the functions of Depositary.

Article 18

ACCESSION

As from....., this Protocol shall be open for accession by any Party to the Convention.

Article 19

ENTRY INTO FORCE

1. This Protocol shall enter into force on the thirtieth day following the deposit of the sixth instrument of ratification, acceptance, approval or accession.
2. From the date of its entry into force, this Protocol shall replace the Protocol Concerning Cooperation in Combating Pollution of the Mediterranean Sea by Oil and other Harmful Substances in Cases of Emergency of 1976, in the relations between the Parties to both instruments.

IN WITNESS WHEREOF, the undersigned, being duly authorized thereto, have signed this Protocol.

DONE at, on....., in a single copy in the Arabic, English, French and Spanish languages, the four texts being equally authentic.